



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R03-OAR-2019-0678; FRL-10016-45-Region 3]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; City of Philadelphia and District of Columbia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the negative declarations submitted to satisfy the requirements of the Emission Guidelines and Compliance times for Municipal Solid Waste Landfills (MSW) for the City of Philadelphia, located in the Commonwealth of Pennsylvania, and the District of Columbia. The negative declaration certifies that there are no existing facilities in the City of Philadelphia or the District of Columbia that must comply with this rule.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2019-0678. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Matthew Willson, Permits Branch (3AD10), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street,

Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-5795. Mr. Willson can also be reached via electronic mail at Willson.Matthew@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On July 27, 2020 (85 FR 45154), EPA published a notice of proposed rulemaking (NPRM) for the City of Philadelphia, located in the Commonwealth of Pennsylvania, and the District of Columbia. In the NPRM, EPA proposed approval of negative declarations certifying that there are no existing municipal solid waste landfills in the City of Philadelphia or the District of Columbia that are subject to the requirements of 40 CFR part 60, subpart Cf. The negative declarations were submitted by The City of Philadelphia Air Management Services (AMS) and the District of Columbia Department of Energy and Environment (DOEE) on March 15, 2018 and November 15, 2019, respectively.

Section 111(d) of the Clean Air Act (CAA) establishes standards of performance for certain existing sources. Air pollutants included under this section are those which have not already been established as air quality criteria pollutants via 42 U.S.C. 7408(a) or hazardous air pollutants via 42 U.S.C. 7412. Section 111(d)(1) requires states to submit to EPA for approval a plan that establishes standards of performance. The plan must provide that the state will implement and enforce the standards of performance. A Federal plan is prescribed if a state does not submit a state-specific plan or the submitted plan is disapproved. If a state has no designated facilities for a standards of performance source category, it may submit a negative declaration in lieu of a state plan for that source category according to 40 CFR 60.23a(b) and 62.06.

II. Municipal Solid Waste Landfill Regulations

A MSW landfill is defined in 40 CFR 60.41f as, “an entire disposal facility in a contiguous geographical space where household waste is placed in or on land.” Other substances may be placed in the landfill which are regulated under the Resource Conservation and Recovery Act (RCRA) subtitle D, 40 CFR 257.2. MSW landfills emit gases generated by the decomposition of organic compounds or evolution of new organic compounds from the

deposited waste. EPA regulations specifically delineate measures to control methane and nonmethane organic compound (NMOC) emissions, which can adversely impact public health.

The Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills, as codified at 40 CFR part 60, subpart Cf (subpart Cf, or Emission Guidelines), apply to states with MSW landfills that accepted waste after November 8, 1987 and commenced construction, reconstruction, or modification before July 17, 2014. Such landfills are considered to be “existing” landfills. In states with facilities meeting the applicability criteria of an existing MSW landfill, the Administrator of an air quality program must submit a state plan to EPA that implements the Emission Guidelines.

III. Summary of State Submittal and EPA Analysis

AMS and DOEE have determined that there are no MSW landfills in their respective jurisdictions subject to Federal CAA landfill regulations pursuant to 40 CFR part 60, subpart Cf. The aforementioned negative declarations were made pursuant to the requirements at 40 CFR 60.23a(b) and 62.06, certifying that there are no existing source MSW landfills in their respective jurisdictions subject to the requirements of 40 CFR part 60, subpart Cf. A typographical error in the letter from AMS was noted and clarified by Philadelphia AMS in an e-mail on May 1, 2020. A notice of proposed rulemaking was published in the Federal Register on July 27, 2020 (85 FR 45154). Due to a clerical error, the email clarification sent by AMS was not included in the docket for this action at the time of NPRM publication; however, this email has now been included in the docket. This error was not substantive, did not affect the public’s ability to provide comments and has no impact on the final disposition. One comment was received in support of this action.

IV. Final Action

In this final action, EPA is approving the City of Philadelphia and the District of Columbia’s negative declarations submitted to EPA on March 15, 2018 and November 15, 2019 respectively. The negative declarations satisfy the requirements of 40 CFR 60.23a(b) and 62.06, serving in lieu of a CAA 111(d) state plan for existing MSW landfills.

V. Statutory and Executive Order Reviews

A. General Requirements

EPA's role with regard to negative declarations for designated facilities received by EPA from states is to notify the public of the receipt of such negative declarations and revise 40 CFR part 62 accordingly. This action merely proposes to approve the state's negative declaration as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the negative declarations submitted by the City of Philadelphia and the District of Columbia, certifying that there are no existing municipal solid waste landfills in the City of Philadelphia or the District of Columbia that are subject to the requirements of 40 CFR part 60 subpart Cf, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 2, 2020.

Cosmo Servidio,
Regional Administrator,
Region III.

For the reasons stated in the preamble, the EPA amends 40 CFR part 62 as follows:

**PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR
DESIGNATED FACILITIES AND POLLUTANTS**

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart J—District of Columbia

2. Revise § 62.2140 to read as follows:

§ 62.2140 Identification of plan—negative declaration.

Letter from the District of Columbia, Department of Energy and Environment, submitted November 15, 2019, certifying that there are no existing municipal solid waste landfills in the District of Columbia that are subject to 40 CFR part 60, subpart Cf.

Subpart NN—Pennsylvania

3. Revise § 62.9633 to read as follows:

§ 62.9633 Identification of plan—negative declaration.

Letter from the City of Philadelphia, Department of Public Health, submitted March 15, 2018 and amended by e-mail on May 1, 2020, certifying that there are no existing municipal solid waste landfills in the City of Philadelphia that are subject to 40 CFR part 60, subpart Cf.